IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 309 of 2003 (S/B)

Ashok Kumar Rathi,
S/o Shri H.S. Rathi,
R/o P-4/2, Yamuna Colony,
Dehradun. …… Petitioner

Versus

State of Uttaranchal,
Through Pramukh Sachiv,
Sinchai Evam Urja, Uttaranchal Sashan,
Dehradun & another. ……. Respondents

Mr. M.C. Pant, learned counsel for the petitioner.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. M.C. Pant, learned counsel for the petitioner and Mr. K.P. Upadhyaya, learned Brief Holder for the State.

2. This is a matter where the petitioner has averred that though he was entitled to be considered by the Departmental Promotion Committee (from hereinafter referred to as "DPC") for promotion to the post of Chief Engineer, Level II from the post of Superintending Engineer and though, the DPC was held, the said DPC has not taken any action on the ground that the petitioner was not entitled to be promoted as he had not put in three years of service as Superintending Engineer. The petitioner, further, avers that the rule was subsequently amended and the condition of three years of service on the post of Superintending Engineer was done away with.

3. However, it is seen that the said amendment was stayed by the Allahabad High Court once. Subsequently, the stay order granted by the Allahabad High Court was modified and the Allahabad High Court has also allowed the other persons, who have not put in service of three years as Superintending Engineer, to be promoted. However, that promotion is made subject to the result of the writ petition.

4. On that basis, the learned counsel for the petitioner says that the petitioner, who had already put in one year service as per the amended rule in 2002, who bound to be considered by the DPC and the inaction, on the part of the DPC to declare the result, has resulted in injustice.

5. By way of reply, Mr. K.P. Upadhyaya, learned Brief Holder says that the petitioner was never considered by the DPC and it is not correct to say that the petitioner's case fell for consideration regarding the promotion. The learned counsel says that the Uttaranchal Government had, throughout, taken a stand that the petitioner was not, at that time, entitled because the amended rule was already stayed. However, the learned counsel, further, goes on to say that the next DPC is to be formed shortly and the petitioner's case would be considered in that DPC for the promotion as the petitioner is now, entitled to be considered either on the amended rules or even on the un-amended rules.

6. In that view, we do not wish to proceed with this writ petition and we would dispose of the writ petition on the basis of the statement made by the Government pleader. However, Mr. M.C. Pant, learned counsel for the petitioner very seriously raises a question of deemed date of his promotion. In case, he is promoted to the post of Chief Engineer, Level II, the question of his deemed date shall be kept open. He shall, accordingly, be entitled to contest that question, if the deemed date is refused to him.

7. With these observations, the writ petition is disposed of. All the applications in this writ petition are also closed.

(Irshad Hussain, J.
01.10.2004

(V.S. Sirpurkar, C.J.)
01.10.2004

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